

**AMENDMENTS TO THE DIVISION OF CONSUMER
PROTECTION**

2022 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: James A. Dunnigan

Senate Sponsor: _____

LONG TITLE

General Description:

This bill amends the Health Spa Act.

Highlighted Provisions:

This bill:

- defines terms;
 - amends provisions of the Health Spa Act regarding:
 - a contract for a health spa service;
 - the assignment of a contract for a health spa service;
 - a change in a consumer's primary location; and
 - an exemption from bond, letter of credit, or certificate of deposit requirement;
- and
- makes technical and conforming changes.

Money Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

13-23-2, as last amended by Laws of Utah 2021, Chapter 266



13-23-3, as last amended by Laws of Utah 2021, First Special Session, Chapter 9
13-23-5, as last amended by Laws of Utah 2021, Chapter 266
13-23-6, as last amended by Laws of Utah 2021, First Special Session, Chapter 9
13-23-8, as enacted by Laws of Utah 2017, Chapter 98
63I-2-213, as last amended by Laws of Utah 2021, First Special Session, Chapter 9

Be it enacted by the Legislature of the state of Utah:

Section 1. Section **13-23-2** is amended to read:

13-23-2. Definitions.

As used in this chapter:

(1) "Business enterprise" means a sole proprietorship, partnership, association, joint venture, corporation, limited liability company, or other entity used in carrying on a business.

(2) "Consumer" means a purchaser of health spa services for consideration.

~~[(3) "Consumer's primary location" means the health spa facility that a health spa designates in a contract for health spa services as the health spa facility the consumer will primarily use for health spa services.]~~

~~[(4)]~~ (3) "Division" means the Division of Consumer Protection.

~~[(5)]~~ (4) (a) "Health spa" means a business enterprise that provides access to a facility:

(i) for a charge or a fee; and

(ii) for the development or preservation of physical fitness or well-being, through exercise, weight control, or athletics.

(b) "Health spa" does not include:

(i) a licensed physician who operates a facility at which the physician engages in the practice of medicine;

(ii) a hospital, intermediate care facility, or skilled nursing care facility;

(iii) a public or private school, college, or university;

(iv) the state or a political subdivision of the state;

(v) the United States or a political subdivision of the United States;

(vi) a person offering instruction if the person does not:

(A) utilize an employee or independent contractor; or

(B) grant a consumer the use of a facility containing exercise equipment;

(vii) a business enterprise, the primary operation of which is to teach self-defense or a martial art, including kickboxing, judo, or karate;

(viii) a business enterprise, the primary operation of which is to teach or allow an individual to develop a specific skill rather than develop or preserve physical fitness, including gymnastics, tennis, rock climbing, or a winter sport;

(ix) a business enterprise, the primary operation of which is to teach or allow an individual to practice yoga or Pilates;

(x) a private employer who owns and operates a facility exclusively for the benefit of the employer's employees, retirees, or family members, if the operation of the facility:

(A) is only incidental to the overall function and purpose of the employer's business; and

(B) is offered on a nonprofit basis;

(xi) an individual providing professional services within the scope of the individual's license with the Division of Occupational and Professional Licensing;

(xii) a country club;

(xiii) a nonprofit religious, ethnic, or community organization;

(xiv) a residential weight reduction center;

(xv) a business enterprise that only offers virtual services;

(xvi) a business enterprise that only offers a credit for a service that a separate business enterprise offers;

(xvii) the owner of a lodging establishment, as defined in Section 29-2-102, if the owner only provides access to the lodging establishment's facility to:

(A) a guest, as defined in Section 29-2-102; or

(B) an operator or employee of the lodging establishment;

(xviii) an association, declarant, owner, lessor, or developer of a residential housing complex, planned community, or development, if at least 80% of the individuals accessing the facility reside in the housing complex, planned community, or development; or

(xix) a person offering a personal training service exclusively as an employee or independent contractor of a health spa.

~~[(6)]~~ (5) "Health spa facility" means a facility to which a business entity provides access:

(a) for a charge or a fee; and

(b) for the development or preservation of physical fitness or well-being, through exercise, weight control, or athletics.

~~[(7)]~~ (6) (a) "Health spa service" means instruction, a service, a privilege, or a right that a health spa offers for sale.

(b) "Health spa service" includes a personal training service.

~~[(8)]~~ (7) "Personal training service" means the personalized instruction, training, supervision, or monitoring of an individual's physical fitness or well-being, through exercise, weight control, or athletics.

(8) "Primary location" means the health spa facility that a health spa designates in a contract for health spa services as the health spa facility the consumer in the contract will primarily use for health spa services.

Section 2. Section **13-23-3** is amended to read:

13-23-3. Contracts for health spa services.

(1) (a) A contract for the purchase of a health spa service shall be in writing.

(b) The written contract described in Subsection (1)(a) shall constitute the entire agreement between the consumer and the health spa.

(2) (a) The health spa shall provide the consumer with a fully completed copy of the contract required by Subsection (1):

(i) at the time of the contract's execution; and

(ii) at any time, upon the consumer's request.

(b) The copy described in Subsection (2)(a) shall show:

(i) the date of the transaction;

(ii) the name and address of the health spa;

(iii) the name, address, and telephone number of the consumer; and

(iv) the consumer's primary location.

(3) (a) A contract described in Subsection (1):

(i) may not have a term in excess of 36 months; and

(ii) subject to Subsection (3)(b), may include an automatic renewal provision.

(b) An automatic renewal provision described in Subsection (3)(a) is effective if notice of the automatic renewal provision is provided to the consumer no sooner than 60 days before,

and no later than 30 days before, the day on which the contract automatically renews.

(c) Except for a lifetime membership sold before May 1, 1995, a health spa may not offer a lifetime membership.

(4) A contract described in Subsection (1) or an attachment to the contract shall clearly state each rule of the health spa that applies to:

(a) the consumer's use of the health spa's facilities and services; and

(b) cancellation and refund policies of the health spa.

(5) A contract described in Subsection (1) shall specify which equipment or facility of the health spa:

(a) is omitted from the contract's coverage; or

(b) may be changed at the health spa's discretion.

(6) A contract described in Subsection (1) shall clearly:

(a) state the consumer's rescission rights under Section 13-23-4; and

(b) provide an email address and a mailing address where the consumer can send the health spa a notice of intent to rescind the contract.

(7) (a) If a consumer and a health spa enter into a contract described in Subsection (1) before May 4, 2022, the health spa may:

(i) assign the contract to another health spa that requires the consumer to obtain a contracted health spa service at a health spa facility within five driving miles from the consumer's initial primary location; or

(ii) change the consumer's primary location to a health spa facility within five driving miles from the consumer's initial primary location.

(b) If a consumer and a health spa enter into a contract described in Subsection (1) on or after May 4, 2022, the health spa may not:

(i) assign the contract to another health spa that requires the consumer to obtain a contracted health spa service at a health spa facility within five driving miles from the consumer's initial primary location, unless the health spa that enters into the contract includes in the contract a disclaimer that:

(A) is in at least 12-point, bold type on the first page of the contract; and

(B) states that the health spa may assign the contract to another health spa requiring the consumer to obtain a contracted health spa service at another facility within five driving miles

152 from the consumer's initial primary location; or

153 (ii) change the consumer's primary location to a health spa facility within five driving
154 miles from the consumer's initial primary location, unless the health spa includes in the
155 contract a disclaimer that:

156 (A) is in at least 12-point, bold type on the first page of the contract; and

157 (B) states that the health spa may change the consumer's primary location to a health
158 spa facility within five driving miles from the consumer's initial primary location.

159 ~~[(7)]~~ (8) (a) Except as permitted under Subsection ~~[(7)]~~ (8)(b), a health spa may not
160 assign a contract for a health spa service to a health spa that requires the consumer to obtain a
161 contracted health spa service at a health spa facility farther than five driving miles from the
162 consumer's initial primary location, unless the health spa:

163 (i) provides the consumer the option to cancel the contract; and

164 (ii) receives approval from the consumer to assign the contract.

165 (b) A health spa may assign a consumer's contract for a health spa service without
166 complying with Subsection ~~[(7)]~~ (8)(a), if:

167 (i) during the 60-day period immediately before the day on which the health spa
168 assigns the consumer's contract, the consumer uses a health spa facility operated by the
169 assignee more frequently than the consumer's primary location;

170 (ii) the assignee changes the consumer's primary location to the health spa facility
171 described in Subsection ~~[(7)]~~ (8)(b)(i); and

172 (iii) the health spa has a reciprocity agreement with the assignee.

173 ~~[(8)]~~ (9) (a) Except as permitted under Subsection ~~[(8)]~~ (9)(b), before a health spa
174 changes a consumer's primary location to a health spa facility farther than five driving miles
175 from the consumer's initial primary location, the health spa shall provide the consumer the
176 option to:

177 (i) cancel the contract for a health spa service; or

178 (ii) (A) continue the contract at the new health spa facility; and

179 (B) designate the new health spa facility as the consumer's primary location.

180 (b) A health spa may change a consumer's primary location without providing the
181 consumer the option described in Subsection ~~[(8)]~~ (9)(a), if:

182 (i) during the 60-day period immediately before the day on which the health spa

changes the consumer's primary location, the consumer uses a health spa facility other than the consumer's primary location more frequently than the consumer's primary location; and

(ii) the health spa changes the consumer's primary location to the health spa facility described in Subsection ~~[(8)]~~ (9)(b)(i).

~~[(9)]~~ (10) The provisions of this section apply regardless of when the execution of a contract described in Subsection (1)(a) occurs.

Section 3. Section 13-23-5 is amended to read:

13-23-5. Registration -- Bond, letter of credit, or certificate of deposit required --

Penalties.

(1) (a) (i) A health spa may not operate a health spa facility in this state unless the health spa registers the health spa facility with the division in accordance with this section.

(ii) Registration of a health spa facility under this chapter is effective for one year.

(iii) To renew a health spa facility registration under this section, the health spa shall submit a registration renewal application to the division at least 30 days before the day on which the health spa facility's registration expires.

(iv) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the division may establish:

(A) the initial health spa facility registration process, including the content of any forms;

(B) the health spa facility registration renewal process, including the content of any forms; and

(C) a surety exemption process, including the content of any forms.

(b) Each health spa registering a health spa facility in this state shall designate a registered agent for receiving service of process.

(c) A health spa's registered agent shall be reasonably available from 8 a.m. until 5 p.m. during normal working days.

(d) The division shall charge and collect a fee for registration and registration renewal under guidelines provided in Section 63J-1-504.

(e) If a health spa fails to submit a complete registration renewal application before the day on which a health spa facility's registration expires, the health spa shall pay a fee of \$25 for each month or part of a month that passes:

214 (i) after the day on which the registration expires; and
215 (ii) before the day on which the health spa submits a complete registration renewal
216 application.

217 (f) The fee described in Subsection (1)(e) is in addition to the registration renewal fee
218 described in Subsection (1)(d).

219 (g) A health spa registering or renewing a registration shall provide the division a copy
220 of the liability insurance policy that:

221 (i) covers the health spa; and
222 (ii) is in effect at the time of the registration or registration renewal.

223 (h) If information in an application to register or renew the registration of a health spa
224 facility materially changes or becomes incorrect or incomplete, the applicant shall, within 30
225 days after the day on which the information changes or becomes incorrect or incomplete,
226 correct the application or submit the correct information to the division in a manner that the
227 division establishes by rule made in accordance with Title 63G, Chapter 3, Utah
228 Administrative Rulemaking Act.

229 (2) (a) Except as provided in Section [13-23-6](#), for each health spa facility a health spa
230 operates, the health spa shall obtain and maintain:

231 (i) a performance bond issued by a surety authorized to transact surety business in this
232 state;

233 (ii) an irrevocable letter of credit issued by a financial institution authorized to do
234 business in this state; or

235 (iii) a certificate of deposit.

236 (b) The bond, letter of credit, or certificate of deposit described in Subsection (2)(a)
237 shall be payable to the division for the benefit of a consumer who incurs damages as the result
238 of the health spa:

239 (i) violating this chapter; or
240 (ii) going out of business.

241 (c) (i) After each consumer has fully recovered damages, the division may recover
242 from the bond, letter of credit, or certificate of deposit described in Subsection (2)(a) the costs
243 of collecting and distributing funds under this section, in an amount up to 10% of the face
244 value of the bond, letter of credit, or certificate of deposit.

(ii) The total liability of the issuer of the bond, letter of credit, or certificate of deposit described in this Subsection (2) may not exceed the amount of the bond, letter of credit, or certificate of deposit.

(iii) A health spa shall maintain a bond, letter of credit, or certificate of deposit described in this Subsection (2) in force for one year after the day on which the health spa notifies the division in writing that the health spa has ceased all activities regulated under this chapter at the health spa facility.

(d) (i) The division may impose a fine against a health spa that fails to comply with the requirements of this Subsection (2) of up to \$100 per day that the health spa remains out of compliance.

(ii) The division shall deposit each fine the division collects under this Subsection (2)(d) into the Consumer Protection Education and Training Fund created in Section 13-2-8.

(3) (a) In accordance with the schedule established in Subsection (3)(b), a health spa shall base the minimum principal amount of the bond, letter of credit, or certificate of deposit required under Subsection (2) on:

(i) the number of unexpired contracts for a health spa service, at the time the health spa submits the health spa facility registration or registration renewal application, that designate the health spa facility as the consumer's primary location; or

(ii) if at the time the health spa submits the health spa facility registration application the health spa has not executed a contract for a health spa service that designates the health spa facility as a consumer's primary location, the number of contracts for a health spa service designating the health spa facility as a consumer's primary location that the health spa reasonably expects to execute during the health spa facility's first year of registration.

(b)

Principal Amount of
Bond, Letter of Credit,
or Certificate of Deposit

Number of Contracts

\$5,000	100 or fewer
\$10,000	101 to 250
\$15,000	251 to 500

273	35,000	501 to 1,500
274	50,000	1,501 to 3,000
275	75,000	3,001 or more

276 (c) A health spa [~~that is not exempt under Section 13-23-6~~] shall comply with
277 Subsections (3)(a) and (b) with respect to all of the health spa's unexpired contracts for a health
278 spa service~~[, regardless of whether a portion of those contracts satisfies]~~ that do not satisfy the
279 criteria in Section 13-23-6.

280 (4) A health spa shall furnish a copy of the current bond, letter of credit, or certificate
281 of deposit to the division before selling, offering or attempting to sell, soliciting the sale of, or
282 becoming a party to any contract to provide a health spa service.

283 (5) A health spa shall:

284 (a) maintain accurate records of:

285 (i) the bond, letter of credit, or certificate of deposit; and

286 (ii) of each payment made, due, or to become due to the issuer; and

287 (b) open the records described in Subsection (5)(a) to inspection by the division at any
288 time during normal business hours.

289 (6) (a) A health spa with a health spa facility registered under this section shall submit
290 a new initial registration for the health spa facility, if the health spa:

291 (i) changes ownership;

292 (ii) permanently ceases and then again commences operation at the health spa facility;

293 or

294 (iii) relocates the health spa facility.

295 (b) The former owner of a health spa may not release, cancel, or terminate the owner's
296 liability under any bond, letter of credit, or certificate of deposit previously filed with the
297 division, unless:

298 (i) the new owner has filed a new bond, letter of credit, or certificate of deposit for the
299 benefit of consumers covered under the previous owner's bond, letter of credit, or certificate of
300 deposit; or

301 (ii) the former owner has refunded all unearned payments to consumers.

302 (7) If a health spa permanently ceases operation or relocates a health spa facility, the
303 health spa shall provide the division notice at least 45 days before the day on which health spa

permanently ceases operation or relocates the health spa facility.

Section 4. Section 13-23-6 is amended to read:

13-23-6. Exemptions from bond, letter of credit, or certificate of deposit requirement.

(1) A health spa is exempt from Subsections 13-23-5(2) through (5) for a health spa facility, if the health spa only offers access to a health spa service at the health spa facility through:

(a) the purchase of an individual class or session;

(b) the purchase of a package:

(i) with a defined number of classes or sessions; and

(ii) for which the health spa may not hold more than \$150 worth of a consumer's unused credit;

(c) the purchase of a monthly membership or pass, payment for which the health spa does not collect from a consumer more than two months in advance;

(d) an installment contract that:

(i) provides for the consumer to make all payments due under the contract, including a down payment, an enrollment fee, a membership fee, or any other payment to the health spa, in equal monthly installments spread over the entire term of the contract; and

(ii) contains the following clause: "If this health spa ceases operations at or changes the consumer's primary location in violation of Utah Code Subsection 13-23-3(7) [or], (8), or (9), no further payments under this contract shall be due to anyone, including any assignee of the contract or purchaser of any note associated with or contained in this contract."; or

(e) a combination of health spa services described in Subsections (1)(a) through (d).

(2) For purposes of finding the principal amount for the bond, letter of credit, or certificate of deposit required under Section 13-23-5, a health spa is not required to include in the calculation described in Subsection 13-23-5(3) a contract that offers access to a health spa service as described in Subsection (1).

[(2)] (3) A health spa that claims exemption from Subsections 13-23-5(2) through (5) or that a contract should be excluded from the calculation described in Subsection 13-23-5(3) bears the burden of proving to the division that the health spa or contract meets the [exemption] relevant criteria described in Subsection (1) or (2).

Section 5. Section **13-23-8** is amended to read:

13-23-8. Grounds for denial, suspension, or revocation.

The director may, in accordance with Title 63G, Chapter 4, Administrative Procedures Act, issue an order to deny, suspend, or revoke an application or registration upon a finding that the order is in the public interest and that:

(1) the application for registration or renewal is incomplete or misleading in a material respect;

(2) the applicant or person registered under this chapter or an officer, director, agent, or employee of the applicant or registrant has:

(a) violated this chapter;

(b) violated Chapter 11, Utah Consumer Sales Practices Act;

(c) been enjoined by a court, or is the subject of an administrative order issued in this or another state, if the injunction or order:

(i) includes a finding or admission of fraud, breach of fiduciary duty, or material misrepresentation; or

(ii) is based on a finding of lack of integrity, truthfulness, or mental competence of the applicant;

(d) obtained or attempted to obtain a registration by misrepresentation;

(e) failed to timely provide the division with any information required by this chapter;

or

(f) failed to pay a fine imposed by the division;

(3) the applicant's or registrant's bond, letter of credit, or certificate of deposit ceases to be in effect;

(4) the applicant or registrant requested an exemption from maintaining a bond, letter of credit, or certificate of deposit under Section **13-23-6**, but does not meet the requirements for exemption; ~~[or]~~

(5) the applicant or registrant excluded from the principal amount calculation described in Subsection **13-23-5**(3) for a bond, letter of credit, or certificate of deposit, a contract that did not meet the requirements for exclusion described in Section **13-23-6**; or

~~[(5)]~~ (6) the applicant or registrant ceases to provide health spa services.

Section 6. Section **63I-2-213** is amended to read:

63I-2-213. Repeal dates -- Title 13.

~~[(1) On July 1, 2022:]~~

~~[(a) Subsection 13-23-3(7)(a) is repealed and replaced with the following:]~~

~~["(a) Except as permitted under Subsection (7)(b), a health spa may not assign a contract for a health spa service unless the health spa:]~~

~~[(i) provides the consumer the option to cancel the contract; and]~~

~~[(ii) receives approval from the consumer to assign the contract."; and]~~

~~[(b) Subsection 13-23-3(8)(a) is repealed and replaced with the following:]~~

~~["(a) Except as permitted under Subsection (8)(b), before a health spa changes a consumer's primary location, the health spa shall provide the consumer the option to:]~~

~~[(i) cancel the contract for a health spa service; or]~~

~~[(ii) (A) continue the contract at the new health spa facility; and]~~

~~[(B) designate the new health spa facility as the consumer's primary location."]~~

~~[(2)] Title 13, Chapter 47, Private Employer Verification Act, is repealed on the program start date, as defined in Section 63G-12-102.~~